

**From:** rgoren@richardgorenlaw.com  
**Subject:** RE: Small Justice v Xcentric Ventures; 1:13-cv-11701-DJC  
**Date:** May 31, 2016 at 12:01 PM  
**To:** dbooth@boothsweet.com  
**Cc:** Lisa\_Hourihan@mad.uscourts.gov, Maria Crimi Speth mcs@jaburgwilk.com

RG

Dan

The amended notice of appeal that will be filed deals with the award of attorney's fee and bond order (the December 31<sup>st</sup> Orders) and Judge Casper's May 2d Orders disposing of the post-judgment motions made in January which motions had delayed the finality of the December 31<sup>st</sup> Orders. There are presently two separate appeals before the First Circuit. The first, the 2015 merits appeal, is entirely separate from the 2016 Appeal of the December 31<sup>st</sup> Orders. The latter orders are not yet final.

With your May 16, 2016 Motion for a supplemental award of attorney's fees, there may now be a third appeal, one as to the merits and two separate ones dealing with fees. I merely seek to minimize the effort of the parties and both the district court and the court of appeals.

The stated purpose of the emergency motion is to request Judge Casper to consider entering a so-called "58/54/59" Order to delay the finality of her May 2d Orders (and her December 31<sup>st</sup> Orders) thereby having only ONE final judgment enter as to attorney's fees.

The timing of a 54/58/59 order is crucial; and a district court judge inclined to enter such an order must do so while the fee motion is pending but before the time to appeal expires. The time to appeal from the May 2d Orders expires tomorrow

to appeal from the May 14 Order entered yesterday  
and not Thursday.

While I regret any confusion with my motion  
mistakenly referencing the appeal deadline as  
Thursday June 2d, if Judge Casper wishes to  
consider entry of a 54/58/59 Order, I think it  
clear it can only be done before the amended  
notice of appeal is filed. To avoid prejudice I  
intend to file that amended notice of appeal  
tomorrow afternoon.

Your suggestion that your merits appeal brief  
should be revised, most respectfully, seems to me  
to be a red herring.

I hope this is helpful.

Richard

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**From:** [dbooth@boothsweet.com](mailto:dbooth@boothsweet.com) [<mailto:dbooth@boothsweet.com>]  
**Sent:** Tuesday, May 31, 2016 11:00 AM  
**To:** [raoren@richardgorenlaw.com](mailto:raoren@richardgorenlaw.com)

**Cc:** [Lisa\\_Hourihan@mad.uscourts.gov](mailto:Lisa_Hourihan@mad.uscourts.gov); Maria Crimi Speth  
**Subject:** Re: Small Justice v Xcentric Ventures; 1:13-cv-11701-DJC

Richard,

On Wednesday, May 25, you told me you would have an amended notice of appeal “in your back pocket” ready to file this week. If you wait to file it until 4 pm on June 1, the brief Xcentric must file in the merits appeal on June 2 will already be at the printers. Instead, please file any amended notice promptly, today, to spare us any further expenses of costs and fees necessitated by revision. We will need time to review it so our brief can address any effect the amended notice may have on the merits appeal. Thank you.

Sincerely,

Dan

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On May 31, 2016, at 9:55 AM, [rgoren@richardgorenlaw.com](mailto:rgoren@richardgorenlaw.com) wrote:

Hi Lisa and Dan,

It appears I miscalculated the 30 day deadline. I must file the amended notice of appeal on June 1<sup>st</sup> tomorrow.

I regret any confusion I may have caused. But to avoid any prejudice I will file the amended notice of appeal tomorrow afternoon around 4pm

Best,

Richard

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**From:** [rgoren@richardgorenlaw.com](mailto:rgoren@richardgorenlaw.com)  
**Sent:** Tuesday, May 31, 2016 9:17 AM  
**To:** 'Lisa\_Hourihan@mad.uscourts.gov'  
**Cc:** [dbooth@boothsweet.com](mailto:dbooth@boothsweet.com)  
**Subject:** Small Justice v Xcentric Ventures; 1:13-cv-11701-DJC

Hi Lisa,

On May 25<sup>th</sup> plaintiffs filed an emergency motion (ECF # 188) requesting Judge Casper to enter an Order under Fed. R. Civ.P 58(e) to treat Xcentric's May 16, 2016 Motion for a supplemental award of attorney's fees as a timely motion under Rule 59 to amend the Court's May 2, 2016 final decision awarding attorney's fees to Xcentric.

Not counting the May 2d date of entry, the 30 day time period for filing a notice of appeal expires on Thursday June 2, 2016. Therefore as referenced in the motion, plaintiffs request the Court to consider the motion in the next few days.

Thank you.

Richard

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